

**WISCONSIN SUPREME COURT**  
**MONDAY, DECEMBER 6, 2004**  
**1:30 p.m.**

01-1345-CR     State v. Paul J. Stuart

*This is the third time this case has come before the Wisconsin Supreme Court. In 2003, the Court took another look at a decision it made in 1999; now, the Court is revisiting its 2003 decision. This case originated in Kenosha County Circuit Court, Judge Michael S. Fisher presiding.*

In this case, the Supreme Court will decide whether a Kenosha man should receive a new trial in light of a recent ruling of the U.S. Supreme Court.

Here is the background: Paul J. Stuart was charged with first-degree intentional homicide. During the trial, Paul's brother John invoked his Fifth Amendment right against self-incrimination and refused to testify. John had testified at the preliminary hearing that Paul had confessed to the shooting. The State wanted to read that testimony to the jury, but the judge would not permit it because Paul's lawyer was unable to cross-examine John. The State appealed this ruling to the Court of Appeals, which affirmed the trial court. The State then made an emergency appeal to the Supreme Court, which reversed the lower courts on a 4-3 vote. Based upon the Supreme Court's order, issued Feb. 23, 1999, John's testimony from the preliminary hearing was read to the jury. Paul was convicted and sentenced to life in prison with a parole eligibility date of 2029.

Paul again appealed, arguing that it was unfair for the jury to have heard his brother's testimony. The Court of Appeals declined to rule on Paul's appeal, indicating that it was uncertain whether the Supreme Court's 1999 order allowing the testimony constituted the "law of the case." The law of the case doctrine says that an appellate court ruling in a case is to be followed in any future proceedings in that case unless the facts of the case change.

The Court of Appeals asked the Supreme Court to clarify whether its Feb. 23, 1999 order – which was very short and did not contain legal reasoning – constituted the law of the case, or whether the underlying question of whether Paul should get a new trial could be considered. The Supreme Court in 2003 declared, on a 5-2 vote, that the 1999 ruling did establish the law of the case, and that Stuart's conviction would stand.

Then, in 2004, the U.S. Supreme Court issued a decision<sup>1</sup> in a criminal case from the state of Washington that involved a defendant who was tried for assault and attempted murder. The defendant challenged the use of statements that his wife had made to police. The wife, citing marital privilege, did not testify at the trial. The trial court permitted prosecutors to enter her statements into evidence and the Washington Supreme Court upheld this ruling. The U.S. Supreme Court, however, unanimously overturned the man's conviction, concluding that the right to a fair trial demands that the defendant be able to confront his/her accuser.

The Wisconsin Supreme Court will now, in light of this U.S. Supreme Court ruling, take another look at Stuart's case.

---

<sup>1</sup> Crawford v. Washington, 541 U.S. \_\_\_\_ 33